IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21057 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HAJRABEN ISABBHAI & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR VC DESAI for Petitioner(s) : 1 - 2.
MR MR MENGADE ASST GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,
MR KV SHELAT for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/10/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment

and order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat dated 24.3.2005 passed in Revision Application No.85 of 2000 in allowing the said revision application quashing and setting aside the orders passed by the Deputy Collector, Viramgam dated 19.7.1999 and the Collector, Ahmedabad dated 6.6.2000 and restoring Entry No.7340.

2. The dispute is with regard to the Revenue Entry No.7340 with respect to the land bearing Survey No.1296, 1297, 1298, 1299 and 1302. It appears that the aforesaid lands were originally owned by one Isabbhai Umarbhai who happened to be father of the petitioners as well as the respondent No.2 and the father-in-law of the respondent No.3 herein. Said Isabbhai Umarbhai has died on 18.1.1982 and names of the petitioners as well as the respondent Nos.2 & 3 came to be mutated in the revenue record by succession vide Entry No.7339 on 20.2.1982. On the same day, there was another entry being Entry No.7340 by which the names of the petitioners came to be

deleted on the ground that the petitioners have relinquished their rights as they have got their share in the property.

3. It is the contention on behalf of the petitioners that the petitioners came to know about the said deletion and entry No.7340 in the year 1999 and therefore, they immediately preferred an appeal before the Deputy Collector, Viramgam Prant being RTS Appeal No.22 of 1999 and the Deputy Collector, Viramgam Prant held that at the time when the aforesaid Entry No.7340 was posted, notice under Section-135(D) of the Bombay Land Revenue Code was not issued and therefore, provisions of the Bombay Land Revenue Code were not complied with and accordingly, set aside the Entry No.7340. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Viramgam Prant dated 19.7.1999 passed in RTS Appeal No.22 of 1999, the respondent Nos.2 and 3 preferred revision application before the Collector, Ahmedabad being Revision Application No.161 of 1999 and the Collector, Ahmedabad by its

order dated 6.6.2000 dismissed the said revision application. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Ahmedabad dated 6.6.2000 passed in Revision Application No.161 of 1999,the respondents Nos.2& 3 herein preferred the Revision Application before the State Government i.e. Additional Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application No.85 of 2000 and considering the fact that the Civil Suit is already pending between the parties, and necessary entry can be made on the basis of the judgment and decree that may be passed by the Civil Court, the Addl. Secretary (Appeals), Revenue Department, State of Gujarat by its judgment and order dated 24.3.2005 allowed the said revision application restoring the Entry No.7340 with above observations. Being aggrieved and dissatisfied with the judgment and order passed by the Additional Secretary (Appeals), Revenue Department, State Gujarat dated 24.3.2005 passed in Revision Application No.85 of 2000, the petitioners have preferred the present special civil application under Articles 226 and 227 of the

Constitution of India.

4. Shri V.C.Desai, learned advocate appearing on behalf of the petitioners has vehemently submitted that though the Deputy Collector, Viramgam Prant as well as the Collector, Ahmedabad both have concurrently found that before the Entry No.7340 was posted by which the names of the petitioners were deleted, notice under Section-135(D) of the Bombay Land Revenue Code was not issued and therefore, inspite of that fact, the Secretary (Appeals) without dealing with the same, has allowed the revision application which is not permissible.

5. Shri K.V.Shelat, learned advocate appearing on behalf of the respondent Nos.2 & 3 while opposing the present special civil application has submitted that the aforesaid Entry No.7340 was posted after recording the statement of the petitioners which is disputed by Shri Desai, learned advocate appearing on behalf of the petitioners.

6. Heard the learned advocates appearing on behalf of the parties.

7. It is required to be noted that the dispute is with regard to the revenue entry and as held by the Hon'ble Supreme Court as well as this Court in catena of decisions, entry in the revenue record does not confer any right, title or interest and it is only for fiscal purpose for recovering revenue by the State Government who is in possession of the land in question. Therefore, merely because the names of the petitioners are deleted and entry to that effect is made but if the petitioners are having rights, the same will not be taken away only by the aforesaid entry. If there is any dispute with regard to the title then, the parties are required to be relegated to approach the civil court for establishing their rights and / or crystallizing their rights and necessary entry can be made and / or amended on the basis of the judgment and decree that may be passed by the competent civil court. However, to avoid any

further and future complication and multiple proceedings, necessary an additional entry can also be made in the revenue record to the effect that there is civil suit pending between the parties and that said entry would be subject to the ultimate outcome of the civil suit pending between the parties. Under the circumstances, while disposing of the present special civil application and continuing the Entry No.7340 with respect to the land in question, it is directed to the Revenue Authority that an additional entry will be made to the effect that civil suit being Regular Civil Suit No.91 of 2000 is pending i the court of learned Civil Judge, Viramgam and the aforesaid entry no.7340 would be subject to the ultimate outcome of the said civil suit and / or any other suit pending between the parties with respect to the lands in question and necessary entry will be made and / or amended on the basis of judgment and decree that may be passed by the civil court in the aforesaid civil suit.

8. With aforesaid observations and directions, the

present special civil application is disposed of accordingly.

[M.R.Shah, J.]

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